

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0124, Lawrence W. Cleasby v. Phoenix Auto Body, Inc.; Lawrence Cleasby v. Phoenix Auto Body, Inc., the court on March 3, 2006, issued the following order:

The defendant, Phoenix Auto Body, Inc., appeals a jury verdict that awarded \$38,500 in damages to the plaintiff, Lawrence W. Cleasby, on his breach of contract claim. We reverse and remand.

The defendant first argues that the superior court erroneously precluded it from introducing evidence showing that the condition of the car after the defendant repaired it was different from the condition of the car at the time of trial. This evidence, the defendant asserts, was relevant to establish the extent of the damages for which it was responsible. The trial court ruled that the defendant was collaterally estopped from introducing this evidence by the finding of the first jury that the defendant breached the parties' contract.

We review a trial court's decision on the admissibility of evidence under an unsustainable exercise of discretion standard. Figlioli v. R.J. Moreau Cos., 151 N.H. 618, 628 (2005). To meet this standard, the defendant must demonstrate that the trial court's ruling was clearly untenable or unreasonable to the prejudice of its case. *Id.*

"In its most basic formulation, the doctrine of collateral estoppel bars a party to a prior action, or a person in privity with such a party from relitigating any issue or fact actually litigated and determined in the prior action." McNair v. McNair, 151 N.H. 343, 352 (2004) (quotation omitted). Because the issue of the extent of the damage to the car for which the defendant was responsible was not determined in the first trial, collateral estoppel was not a bar to the evidence the defendant sought to introduce.

The first jury found only that the defendant committed a legal wrong by breaching the parties' agreement. The first jury made **no** findings with respect to damages. Indeed, the parties appear to have recognized this by stipulating, after the first trial, that one of the issues to be tried at the second trial was the extent of damages.

Contrary to the plaintiff's assertions, a finding that a party has breached an agreement is not a finding as to the amount of damages to which the injured

party is entitled. While a finding of breach will entitle the injured party to damages, “there are instances in which the breach causes no loss. . . . There are also instances in which loss is caused but recovery for that loss is precluded because it cannot be proved with reasonable certainty In all these instances the injured party will nevertheless get judgment for nominal damages” Restatement (Second) of Contracts § 346 comment b at 111 (1981); see also 24 R. Lord Williston on Contracts § 64:8 (4th ed. 2002).

Because the first jury did not determine the extent of damages for which the defendant was responsible, its finding of liability did not preclude the defendant from introducing evidence that it was responsible for only a portion of the damage to the car. Accordingly, it was error for the trial court to rule that the defendant was collaterally estopped by the first jury’s verdict from introducing evidence showing that the condition of the car after the defendant repaired it was different from the condition of the car at the time of trial. As the defendant has adequately demonstrated that the trial court’s error prejudiced its case, we reverse the trial court on this ground.

We address the defendant’s remaining arguments to the extent that they are likely to arise upon retrial. The defendant next asserts that the trial court erroneously failed to instruct the jury that causation was an element of damages. The instruction the defendant requested stated, in pertinent part:

A person who claims damages has the burden of proving that it is more probable than not that the damages he/she seeks were caused as a result of the legal fault of the defendant person, and he/she must show the extent and the amount of those damages.

. . . .

For each item of loss or harm that plaintiff claims, plaintiff must prove that it is more probable than not, that (1) the plaintiff has (or will have) such a loss or harm and (2) the loss or harm was caused by the legal fault of defendant.

W. Murphy & D. Pope, N.H. Civil Jury Instructions § 9.2 (rev. ed. 2005). The trial court denied the defendant’s request for such an instruction on the ground that the first jury had “already determined causation and the extent of the damages.”

The trial court instructed the jury as follows with respect to causation:

You must determine the amount of damages to which the plaintiff is entitled as a result of [the defendant]’s failure to fulfill its obligation under the contract. The purpose of any damages award is to put the plaintiff in the same position he would have

been in if the defendant had fully performed under the contract. You should compare the position of the plaintiff as a result of the defendant's violation of the agreement to the position the plaintiff would have been in had the defendant fully performed its promises. You may award the plaintiff only those damages which the defendant at the time the contract was made had reason to foresee as a probable result of its violation of the agreement. The plaintiff must prove damages by a preponderance of the evidence.

Now, I've stated previously, damages suffered by the plaintiff as a consequence of the defendant's alleged breach of contract can be awarded by you if these damages were reasonably foreseeable by the parties at the time the contract was made. You may conclude in either of two ways that certain damages were foreseeable. First, they were foreseeable if they resulted in the ordinary course of events from the violation of the contract or, two, they were foreseeable if the defendant had reason to know the relevant facts and foresee that the alleged loss would occur.

The purpose of jury instructions is to identify issues of material fact, and to inform the jury of the appropriate standards of law by which it is to resolve them. Transmedia Restaurant Co. v. Devereaux, 149 N.H. 454, 457 (2003). We review jury instructions in context and will not reverse the trial court unless the charge, taken in its entirety, fails adequately to explain the law applicable to the case in such a way that the jury is misled. Id.

Reviewing the jury instructions as a whole, we conclude that they adequately explained the law applicable to the case and did not mislead the jury. See Murphy & Pope, supra at §§ 32.41, 32.43. The test of causation in this context is foreseeability. See Indep. Mechanical Contractors v. Gordon T. Burke & Sons, 138 N.H. 110, 113 (1993). The trial court's instructions adequately explained that to recover on his damage claims, the plaintiff had to prove that his damages were a reasonably foreseeable consequence of the defendant's breach. See id.

The defendant next contends that the trial court erroneously precluded it from introducing evidence to show that it had properly aligned the structure of the vehicle's frame. In light of the verdict form in the first trial, we find no error. The jury in the first trial answered "yes" to the following verdict question: "Do you find by a preponderance of the evidence, the Plaintiff having the burden of proof, that the Defendant breached its contract with the Plaintiff in connection with the repairs performed on the 2002 Volvo Motor vehicle?" The jury in the first trial answered "no" to the verdict question that pertained to liability under the consumer protection law. While the verdict form required the jury to specify the theory under which it found the defendant liable, the form did not require the

jury to state the facts as the jury found them to be proved. In this way, the verdict was special as to the theory of liability, but was general as to the material issues of the case.

A general verdict “includes findings of all facts essential to the defendant’s liability and imports that the jury has found all issues in the plaintiff’s favor.” 75B Am. Jur. 2d Trial § 1751 (2d ed. 1992). “Such a verdict implies that the jury accepts that part of the evidence favorable to the plaintiff, and, where different inferences might possibly be drawn from the evidence, that the jury drew those favorable to the plaintiff’s case.” *Id.* Thus, the first jury’s general verdict in favor of the plaintiff on his breach of contract claim implied findings on all issues in his favor. See McGinley v. Railroad, 79 N.H. 320, 321 (1919) (“a general verdict or finding implies the finding of all evidentiary facts necessary to sustain it”). In effect, by finding the defendant liable on the plaintiff’s breach of contract theory, the first jury found the defendant breached its contract with respect to all of the repairs it performed on the plaintiff’s vehicle. Accordingly, it was not error for the trial court to preclude the defendant from introducing evidence in the second trial to show that it completed one repair appropriately.

Finally, the defendant argues that the trial court erroneously excluded an exhibit, which opposing counsel had previously agreed the defendant could admit. The record shows that, at trial, opposing counsel explained that she agreed before she realized that the exhibit was hearsay and was going to be introduced for the truth of what it asserted. In light of this record, we find no error in the trial court’s decision to exclude the exhibit.

Because we have reversed the second jury’s verdict, we need not address the defendant’s argument that the verdict was excessive. Nor need we address the defendant’s argument that the trial court erroneously denied its motion for a directed verdict.

Reversed and remanded.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.